Pipefitters and Steamfitters Local Union No. 247 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (Inland Industrial Contractors, Inc.) ***and*** **Edwin Funderburk** ***and*** **Ronald W. Jones.** Cases 15–CB–4364 and 15–CB–4364–2

October 31, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On September 11, 1998, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions to the extent consistent with this Decision and Order.

The judge found, inter alia, that the Respondent, by its business manager, Johnny R. Gypin, failed to permit Edwin Funderburk, a member of another local of the International Union, to register on Respondent's out-of-work list, and that it failed to refer him to work, in violation of the Act. We agree with the judge that Respondent violated the Act in the first respect.[1] We do not agree that it unlawfully failed to refer Funderburk to work.

The facts found by the judge show that the Respondent had referred Funderburk out to jobs on several occasions, including a job at Inland. He had quit that job in June 1997.[2] In late July, Funderburk by telephone asked Gypin about work at Inland. Gypin told Funderburk that even if Inland needed people, there were employees returning from out of town whom he would be referring first. These members were apparently Donnie Edwards, Mike Nugent, Larry George, and Ronald Jones, whose names had been put on the out-of-work list at Edwards' request on May 30. Further, there was no request for workers from other employers at that time. Gypin did talk to Inland's superintendent, Donald Guillot, about giving work to Funderburk. Guillot said that he would prefer that Gypin not send Funderburk to him, as he was not pleased with his work during his recent employment with Inland.

Around the end of July or beginning of August, when Edwards, George, and Nugent returned to the area and asked Gypin if he could get work for them, Gypin prevailed on Guillot to hire them, although Inland had not requested referrals at that time.

At some point in mid-August, Funderburk visited the union hall and, while there, asked if he could sign an out-of-work list. The judge credited Funderburk's testimony that Gypin told him that he did not have an out-of-work list, but that he kept every employee's name on a piece of paper, and called him when he needed him. The judge found that, in fact, there was an out-of-work list. Funderburk was not put on the out-of-work list.

These facts support the judge's finding that the Respondent unlawfully failed to put Funderburk's name on its out-of-work list, but they do not support a finding that the Respondent discriminated against Funderburk by not referring him to employment during the period up to the date of the hearing in this case. With respect to the failure to place Funderburk's name on the out-of-work list, the Respondent told Funderburk that there was no out-of-work list. In fact, there was such a list. The judge found that the Respondent's failure to register Funderburk was not related to any legitimate reason pertaining to the efficient operation of the hiring hall. This failure to register Funderburk was in itself a violation of Section 8(b)(1)(A) and (2) of the Act.[3]

With respect to the allegation concerning the failure to refer Funderburk to Inland, the evidence shows that Respondent (through Gypin) did talk to Inland about giving work to Funderburk. Inland declined because it was not pleased with Funderburk's prior work. Thus, Funderburk's nonreferral to Inland was not pursuant to any unlawful action or inaction by Respondent. The evidence also discloses that at the times Funderburk contacted Gypin looking for work, there were no requests for referrals from Inland or from any employer with whom Respondent had an exclusive hiring hall agreement. While Gypin did successfully secure work around this time for others, this was not in response to requests for referrals pursuant to the hiring hall agreement. There is also no evidence that Gypin thereafter provided Inland, or any other employer with whom Respondent had an exclusive hiring hall arrangement, with requested referrals whose names were not on the out-of-work list prior to Funder-

[1] In *Steamfitters Local* 342 (*Contra Costa Electric)*, 329 NLRB 688 (1999), the Board recently held that a union does not violate the Act when its actions in regard to an exclusive hiring hall are a result of mere negligence. As discussed infra, we find that the Respondent Union's failure to put Funderburk's name on the out-of-work list was not an act of mere negligence.

[2] All dates are in 1997.

[3] See *Utility & Industrial Construction Co.*, 214 NLRB 1053 (1974). The record reveals no failure to refer Funderburk to available jobs during the period prior to the hearing. Whether there was a loss of wages because of any opportunities after that must be ascertained at the compliance stage of the proceeding.

burk's request to be put on the list. In the absence of evidence that Respondent favored members over Funderburk in fulfilling requests for referrals pursuant to an exclusive hiring hall agreement, we do not find a violation of the Act in that respect.

ORDER

The National Labor Relations Board orders that the Respondent, Plumbers and Steamfitters Local Union No. 247 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, Alexandria, Louisiana, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to register applicants for employment on the out-of-work list.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Place employees' names on the out-of-work list at their request.

(b) Within 14 days from the date of this Order, notify Edwin Funderburk that it will register him on its out-of-work list and refer him for employment in the order in which he signs the out-of-work list.

(c) Make Edwin Funderburk whole for any loss of earnings and other benefits suffered as a result of the discrimination against him from the date when he was denied an opportunity to register on the out-of-work list.

(d) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places at its hiring hall including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former users of the hiring hall at any time since July 1997.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to register applicants' names on our out-of-work list.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify Edwin Funderburk that we will register him on our out-of-work list and refer him for employment in the order in which he signs the out-of-work list.

WE WILL make Edwin Funderburk whole for any loss of earnings he may have suffered by reason of our failure to allow him to register on our out-of-work list.

PIPEFITTERS AND STEAMFITTERS LOCAL UNION NO. 247 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL–CIO

Tracie Jackson, Esq., for the General Counsel.
*Louis L. Robein Jr., Esq***.** for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me in Alexandria, Louisiana, on August 24, 1998, pursuant to a consolidated complaint (as amended at the hearing) issued by the Regional Director for Region 15 of the National Labor Relations Board on December 21, 1997.

[4] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The consolidated complaint is based on charges filed by Edwin Funderburk and Ronald W. Jones, individuals, in Cases 15–CB–4364 and 15–CB–4364-2, respectively, alleging that Plumbers and Steamfitters Local Union No. 247 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (the Respondent or the Union) violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by failing and refusing to register and refer Funderburk and Jones out for employment with Inland Industrial Contractors, Inc. (the Employer or Inland) and other employer signatories with which Respondent has been party to a collective-bargaining agreement which provides by its terms that the Respondent is the sole and exclusive source of referrals of employees for employment with Inland and other employee signatories. The complaint is joined by the Respondent's answer filed on January 6, 1998, wherein it denies the commission of any violations of the Act.

On the entire record in this proceeding including my observations of the witnesses who testified here and after considering the parties' closing arguments at the hearing I make the following

FINDINGS OF FACT

I. JURISDICTION

A. The Business of Respondent

The complaint alleges, Respondent admits, and I find that the Employer, Inland Industrial Contractors, Inc., is a Florida corporation with an office and place of business in Tallahassee, Florida, with a jobsite in Pineville, Louisiana, where it has been engaged as a construction and maintenance contractor, that during the 12-month period ending November 30, 1997, the Employer in conducting its aforesaid operations, purchased and received at its Pineville jobsite goods valued in excess of $50,000 directly from points outside the State of Louisiana, and performed services valued in excess of $50,000 for Proctor and Gamble Manufacturing Company, an enterprise within the State of Louisiana which is directly engaged in interstate commerce. It is further alleged, admitted, and I find that at all material times, Inland has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. The Labor Organization

The complaint alleges, Respondent admits, and I find that at all times material here, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES[1]

Facts

About May 1, 1996, Inland and Respondent entered into and since then have maintained an agreement, the relevant portions of which are set forth below which provides that Respondent be the exclusive source of referrals of employees for employment with Inland:

> The employer recognizes the Union as its exclusive agent for furnishing skilled workers, semi-skilled workers and unskilled workers for the Employer's use at the Pineville, Louisiana plant of the Proctor and Gamble Company, for modifications, alterations, process changes, minor additions and to supplement the plant[']s maintenance force. In the event the Union does not furnish workers within forty-eight (48) hours after notification of the need for same, the Employer may in its discretion obtain such workers from any other available source.
>
> Subcontractors and non-skilled labor of the Employer are not bound by this Agreement.
>
> Employer signatory hereto shall have the right to call for fifty percent (50%) of its employees by name, by craft. The remaining fifty percent (50%) shall be immediately furnished by the Union from the out-of-work list.
>
> The Employer will be the sole judge of the qualifications and fitness of any applicant referred by the Union and may reject any applicant it considers unqualified or unfit to perform the work in question.

The complaint originally alleged that "since about July 1997 and again since about mid-July through early August 1997," the Respondent has failed and refused to register Funderburk for referral and to refer him to employment with Inland, and with other unknown employers because he was not a member of Respondent and for reasons other than the failure to tender the periodic dues and the initiation fees uniformly required for membership in Respondent. The complaint further alleges that since about late July or August 1997, "Respondent has failed and refused to register for referral and to refer to employment with Inland, and with other employers unknown to the undersigned, employee Jones." It further alleges with respect to Jones that Respondent engaged in this conduct because Jones "supported a Respondent member seeking elected office within Respondent and thereby challenged Respondent's incumbent leadership, and for reasons other than failure to tender the periodic dues and the initiation fees uniformly required for membership in Respondent." After the presentation of the General Counsel's case she moved to amend paragraphs 9 and 11 of the complaint by adding the sentence, "Local 247 failed to follow its established system and rules and procedures of referrals," the General Counsel also conceded and I find that no testimony was presented that Jones had supported a rival candidate as alleged in the complaint and the General Counsel moved to withdraw this portion of the allegation in paragraph 11 of the complaint. I granted the General Counsel's motion to amend paragraphs 9 and 11 and withdraw the portion of paragraph 11 concerning Jones' alleged intraunion support of a rival candidate to the incumbent leadership.

The evidence produced at the hearing establishes that Respondent operates an exclusive hiring hall wherein it refers employees to signatory contractors pursuant to a labor agreement entered into by the Respondent and the contractors. Under the terms of the labor agreement the Employers are required to contact the Union which has 48 hours to refer employees from the union hall and the Employer is precluded from hiring applicants directly from the street for that 48-hour period. This

[1] The following includes a composite of the credited testimony of the witnesses who testified here.

requirement establishes that the hiring hall is exclusive *Morrison-Knudson Co.*, 291 NLRB 250, 258, 259 (1988); *Heavy Construction Laborers Local 663 (Treuner Construction)*, 205 NLRB 455, 456 (1973). However, under the terms of the labor agreement the contractor has the right to provide up to 50 percent of employees from sources other than the Union. Union Business Manager Johnny R. Gypin who I find to be an agent of the Respondent as alleged in the complaint, testified that in practice Inland has called for no more than 5 percent of the employees by name. The foregoing limitation on referral has been held by the Board not to destroy the exclusive nature of a hiring hall arrangement, i.e., company name requested priorities *Morrison-Knudson Co.*, supra; *Treuner*, supra; right to provide percentage of employees from sources other than the Union, *Treuner*, supra. See also *Iron Workers Local 111 (Steel Builders)*, 274 NLRB 742 fn. 1. (1985). I thus conclude that Respondent operated an exclusive hiring hall at all times material here.

Respondent's business Manager, Gypin, testified that he maintains separate out-of-work lists for employees who utilize his hiring hall based on their classifications (i.e., welders, pipefitters, plumbers and apprentices) and employees are free to sign up on the list(s) which are maintained in the hiring hall. Normally, the employees came to the hall and personally sign up on these lists depending on their skills. However, he does on request put employees' names on the list when they telephone either him or his secretary and ask to have their name put on the list. Gypin testified that nonunion members use the hiring hall as well as union members and are called in the order in which they have signed on the out-of-work list.

The Respondent has been a party to the hiring hall agreement with Inland which has performed ongoing maintenance and backup work for the Proctor and Gamble plant for over 25 years. Currently over 100 employees referred by the Union are employed by Inland at the plant. In April 1997, four employees (Donnie Edwards, Larry George, Mike Nugent, and Ronald Jones) who had been referred to Inland by the Union and who were then currently working at the Proctor and Gamble plant, learned of a large job and consequent need for employees in Portland, Oregon, and that employees were being paid $25 to $26 per hour working 11-hour shifts as compared to their wages of approximately $15.50 per hour at Inland. Larry George contacted Business Manager Gypin who made calls on their behalf to the dispatcher of the Local in Portland, Oregon, which had jurisdiction of the work in order to assure that they would be sent out of the hiring hall to work on the project. After being assured by one of the Respondent's members that their prospects for being referred to available work by the Local were good, he passed this on to Edwards and the four employees then voluntarily quit their jobs with Inland. The employees were subsequently sent layoff slips by Inland attributing their termination to lack of work and indicating they were eligible for rehire. On July 31 Inland's superintendent, Donald Guillot, issued a job call for three nonmember employees by name to the hall and spoke with Gypin who told him of another employee who the Union was considering admitting to membership and Guillot told him to send him also in addition to the three he had called for by name. In the meantime employees Edwards, George, Nugent, and Jones had been working in Oregon and Washington, and decided to return to Louisiana. Edwards had called Gypin on May 31 and requested that he put all four employees on the out-of-work list which he did. However, when the job call came in late July, they were still in Oregon. They later returned to Alexandria the end of July. Thus at the time of the call which was for employees currently available these four employees were still in Oregon. During the telephone call from Guillot to Gypin, Guillot had informed Gypin that Nugent's father who is also a union member working out of the union hall for Inland, had told him his son, Mike Nugent, wanted to go back to work on his return. On their return three of the employees contacted Gypin to check if there was any work available and requested that he check on their behalf. There was then no job call from Inland or any other employer as the most recent job call from Inland had been filled by four nonmembers. On three separate occasions Gypin telephoned Superintendent Guillot and inquired if he could use employees Edward, George, and Nugent, respectively, as they wanted to go back to work. In each instance Guillot who is also a union member and has an excellent working relationship with the Union told Gypin to send them out and he put them to work. However, Jones, although on the out-of-work list, did not seek any special assistance or make any request of Gypin although he did come into the union hall and pay his dues and exchange a brief greeting with Gypin.

Gypin testified that over the last several years Ronald Jones has regularly refused work on a number of occasions as he is engaged in several other pursuits, including helping his twin brother who owns a catfish restaurant and has worked out of Brazil for several months of the year. Gypin testified further that he has on numerous occasions found it difficult to find Jones to offer him a referral when his name came up on the list including numerous calls to his daughter in an attempt to locate him. In December 1996, although Jones was on the referral list, he told Gypin, he need not bother to call him for job referrals until he called and told Gypin he was ready to go back to work. In January 1997, Jones called and told him he was ready to return to work and he was sent to Inland on the next job call which occurred in March 1997, and worked there until he voluntarily quit his employment in May to go to Oregon. At the hearing Jones did not dispute any of Gypin's testimony in this regard and was not called to rebut any of Gypin's testimony. Moreover Jones candidly admitted on the stand that his real problem was his opinion that the nonmembers who had been referred to Inland prior to his return from Oregon should have been discharged by Inland at the Union's request in order to make way for the four returning union members including himself. Suffice it to say that had the Union done so, it would have violated Section 8(b)(1)(A) and (2) of the Act. However, Jones did not convey any of his opinion or dissatisfaction concerning this matter to Gypin, but rather filed his charge leading to the complaint in this case.

With respect to the charge filed by Funderburk, he testified that he is a welder and a member of Local 198 in Baton Rouge, Louisiana, and has worked out of Local 247 as he lives within Local 247's jurisdiction. In May 1994, he received a referral to Inland at the Proctor & Gamble plant. In August 1995, he re-

ceived a referral to Fitzgerald Plumbing for a job at Fort Polk. In November 1996, he received a referral to Inland at Proctor and Gamble where he worked until June 19, 1997, when he volunteered for an upcoming layoff because of a skin rash which he had developed and which he believed was attributable to some substance at the plant. On each of the prior occasions of referrals, he had never signed an out-of-work list, but had called Gypin and asked if he needed welders and Gypin said yes or no.

In late July 1997, Funderburk, having recovered from his skin rash, called Gypin who said that Inland was going to send him a manpower list and to call him back in a few days which he did. Gypin then said he had received the manpower list and had members of Local 247 coming from out of town and had to put them back first. Funderburk called back again 2 or 3 weeks later. Following this he went to the union hall and spoke to Gypin as he was looking for work and had seen (an ad in the paper for welders) at Air Conditioning Associates (ACA) and asked permission to apply as this work was within the Union's jurisdiction. Gypin refused this request and Funderburk assured Gypin that he would not apply there. During the course of this discussion Gypin told him he had pulled off a welder from another job and sent him over there. He then asked Gypin if he could sign an out-of-work list and Gypin told him he did not have one, but that he kept every man's name on a piece of paper. Funderbank also testified that Superintendent Guillot had told him that he was doing a good job and that he had never received any negative comments about his work. On cross-examination Funderburk testified that since his layoff at Inland he had worked only 2 days until January 1998. He has since worked as a welder at a nonunion company about 7 months. Gypin has never called him for a job referral since his layoff in June 1997. He acknowledged that he and his immediate supervisor at Inland (Foreman Blayton) had a poor working relationship.

Gypin testified that Funderburk had never called him asking to sign a referral list. After Funderburk quit he called Gypin about returning to work at Inland. Gypin then called Guillot who said he would prefer that Funderburk not be sent to him as he was not satisfied with his work on the second occasion he had worked on the job although he had been satisfied on the prior occasion. He did not tell Funderburk of Guillot's response to his inquiry or that he had contacted him.

Analysis

In *Iron Workers Local 118 (California Erectors)*, 309 NLRB 808 (1982), the Board stated:

> in cases such as this one, in which a departure from hiring hall rules affects employment opportunities, it need not be alleged that the Union was negligent or be shown that the departure was based on invidious or unfair considerations in order to find a violation. Such departures, absent some justification related to the efficient operation of the hiring hall, are arbitrary actions and inherently breach the duty of fair representation owed to all hiring hall users and violate the Act.

I find that the General Counsel has not established a prima facie case of violation of Section 8(b)(1)(A) and (2) of the Act with respect to the alleged unlawful failure to permit Ronald Jones to register on the out-of-work list and to refer him for employment. I credit the testimony of Gypin with respect to the allegations concerning Ronald Jones which testimony was not disputed by Jones at the hearing. It is undisputed that Jones' name was put on the out-of-work list. There was no call for welders at the time when Jones had returned to Louisiana. Although the four "permit" (nonunion) employees who had been hired by Inland in July were not on the out-of-work list, they were called for by Guillot which was consistent with the contract which permits the contractor Inland to call up to 50 percent of employees by name who are not on the out-of-work list. This is what Guillot did in this instance although I note that the apprentice was requested by Guillot following Gypin's suggestion. I credit Gypin that he went the extra mile on behalf of Edwards, George, and Nugent and successfully solicited a return to Inland for each of them following their individual requests that they would like to return to work. I further credit Gypin's testimony that as a result of Jones' prior comments to him, he did not make any special effort to solicit work on his behalf and that there was no job call for welders upon the return of Jones to Louisiana at the end of July 1997. Thus there was no failure to refer Jones. I further find that as testified to by Gypin he honored a request for employees named by Guillot and had an obligation to fill this job request under the terms of the agreement. The Union had no right under the agreement to delay or deny the filling of this job call until some unspecified time when Jones and the other employees who were then in Oregon became available. I find that assuming arguendo, a prima facie case was established, Respondent has rebutted it by showing there was no departure from hiring hall rules and procedures and or that any departure from those rules and procedures was based on the efficient operation of the hiring hall, as there were no calls for workers available at the time Jones returned to Louisiana. *Sheet Metal Workers Local 19*, 321 NLRB 1147, 1155 (1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); and *Manno Electric,* 321 NLRB 278 (1996).

With respect to the failure to permit Funderburk to register on the out-of-work list and to refer him for employment, I find the General Counsel has established a prima facie case of a violation of Section 8(b)(1)(A) and (2) of the Act. Respondent has not met its burden of establishing that its failure to register and refer Funderburk was related to the efficient operation of the hiring hall. I credit Funderburk's testimony that he was not permitted to register and to be referred out to employment. I find that Gypin was giving preference to his own members who he believed would be returning to Louisiana as this occurred in July prior to the period of the calls made by Gypin on behalf of Edwards, George, and Nugent in order to give preference to these members over that of a member of another local. Even assuming that Gypin called Guillot and Guillot expressed a preference that Funderburk not be sent, this did not comply with the contract as a rejection of Funderburk as he had not been referred out to Inland. Moreover, Funderburk has never been permitted to register on the out-of-work list and this continuing violation has not been redressed and Funderburk has been denied all referrals for which he would have been eligible

as were admittedly made since July 1997. Thus, Respondent has not met its burden as it has not established that its failure to permit Funderburk to register on the out-of-work list and to refer him for work was related to the efficient operation of the hiring hall. See *Sheet Metal Workers 19*, supra; *Iron Workers Local 118 (California Erectors)*, supra; *Wright Line*, supra; *Manno Electric*, supra.

CONCLUSIONS OF LAW

1. Inland Industrial Contractors, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization with the meaning of Section 2(5) of the Act.

3. The Respondent operates an exclusive hiring hall under the terms of its collective-bargaining agreement with signatory contractors.

4. The Respondent did not violate the Act by its alleged failure to register and refer Ronald Jones for employment.

5. The Respondent violated Section 8(b)(1)(A) and (2) of the Act by its agent's failure and refusal to register Charging Party Edwin Funderburk on its out-of-work list and to refer him for employment.

6. The aforesaid unfair labor practices in conjunction with the engagement in interstate commerce by the Employer affects commerce within the meaning of Section 2(2), (6), and (7) of the Act.

THE REMEDY

Having found that Respondent violated the Act it shall be ordered to cease and desist therefrom and to take certain affirmative actions designed to further the policies of the Act including the posting of an appropriate notice. Respondent shall be ordered to register and refer applicants for employment who utilize its hiring hall in the order in which they sign the out-of-work list. Respondent shall also be ordered to make Edwin Funderburk whole for its failure to place his name on the out-of-work list and to refer him for employment as found herein for all loss of backpay and benefits sustained by him as a result of the discrimination against him in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1980), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987) at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 1621.

[Recommended Order omitted from publication.]